1. **S.B. Civil Second Appeal No.319/2004**

   Sona Vs. Lala & Anr.

2. **S.B. Civil Second Appeal No.318/2004**

   Sona Vs. Banvira & Anr.

Date of Order :: 06-10-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. S.M. Parihar, for the appellant.

Heard learned counsel for the appellant.

These two appeals having almost identical facts and have been preferred with same question of law, therefore, they are decided by this common judgment.

The appellant is aggrieved against the judgment and decree passed by the trial Court on 28.9.1997 and which was upheld by the first appellate Court vide judgment and decree dated 22.7.2004.

According to learned counsel for the appellant, though the trial court held that the plaintiff failed to prove the agreement to sell in his favour. The trial court has committed illegality because the defendant No.1, subsequently though in his original written statement, he denied the execution of agreement for sale in favour of the plaintiff but submitted another written statement and admitted that he entered into contract with the plaintiff for sale of the property. In view of the above, the finding of the court below is contrary to the admission of the

defendant. It is also submitted that first appellate court committed serious illegality in holding that the agreement should not have been permitted to be admitted in evidence as it was not registered as required under Section 17 of the Indian Registration Act. The first appellate Court failed to notice the proviso to Section 49 of the Registration Act where the unregistered sale-deeds have been made admissible in evidence in a suit for specific performance of the contract.

I considered the submissions of the learned counsel for the appellant and perused the reasons given in the two judgments.

It is admitted case that defendant No.1 submitted written statement denying all allegations of the plaintiff and subsequently he submitted written statement on the plea that the defendant no.2, the purchaser of the property in dispute from the defendant no.1 obtained the written statement from him and submitted the written statement in the court denying the claim of plaintiff which was not correct.

If such a plea was not accepted by the two courts below, I do not find that they have committed any wrong in doing so. First of all, if the defendant legally could have withdrawn his admission then there should have been some cogent reason for withdrawal of admission. The courts have not found the reasons given by the defendant no.1 as cogent reason for withdrawal of the admission. At this stage, it may be observed that there is no reason for any court to blindly believe the statement of the defendant, if they required not to be believed. In this case, the facts reveal that plaintiff tried to get the title for the property by filing the suit for declaration in revenue Court

which was dismissed by the revenue Court and appeal against the judgment and decree of the revenue court was dismissed by the appellate Court. Thereafter, he has filed the suit for specific performance of the contract and injunction impleading the defendant no.1 as the person who can pass on the title to the plaintiff. The suit was filed in the year 1994 and it is submitted by learned counsel for the appellant that plot was allotted to defendant no.1 in the year 1982. The appellant in this case, pleaded that his possession for the plot in question is from prior to 2nd March, 1993. The facts speak themselves. When the plaintiff says that the land in question was allotted to defendant no.1 in the year 1981-82, then how he filed the suit for declaration of his khatedari rights for the same land which he himself admits that it was allotted to defendant no.1 and he himself admitting the title of defendant No.1 till 1993 and thereafter till today as he wants that defendant should transfer title to plaintiff.

In view of the above, the finding recorded by the trial Court and upheld by the first appellate court on issue no.1 appears to be on the basis of the facts and evidence available on record.

In view of the above, even if the finding of first appellate Court that the agreement to sell was not admissible, is set aside even then appellant cannot get any relief.

Therefore, the appeal of the appellant is dismissed.

[PRAKASH TATIA],J.

Praveen